IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.420 OF 1985

Bank of Baroda ..Plaintiffs

Vs.

Universal Homaidas P.Ltd. and Ors..Defendants

Mr.C.S.Kapadia with Mr.Raju Gawde i/b M/s.K.Ashar for the plaintiff

Mr.Gupte, Official Liquidator with Mr.U.S.Patole, Asst.O.L. present

Mr.L.H.Rambhia with Ms.S.Mistry i/b L.H.Rambhia for the defendant no.3(a) and 3(b)

CORAM : S.U.KAMDAR, J

DATED : 19TH JULY 2005

P.C.:

1. The present suit is filed for the recovery of amount from the defendants being the sum of Rs. 7,26,964.22 under the four different facilities being Cash Credit Facility No.I, Cash Credit Facility No.III, Cash Credit Facility No.IV and supply bill purchase facility. Under different facilities, there are diverse amount claimed by the

defendants to the plaintiffs herein. Plaintiffs have also claimed interest @ 18% p.a. The case of the plaintiffs in the present case is as under:

2. The defendant no.1 is a private limited company and defendant no.2 and the original defendant no.3 were the directors of defendant no.1 company. The said defendant no.1 company has gone in liquidation under orders passed by this court dt.31.3.82 in Company Petition No.434 of 1980. It is the case of the plaintiffs that sometime in or about 20.5.76 the defendants requested the plaintiffs to grant cash credit facility no.1 to the extent of Rs.1,25,000/- and in support thereof executed the documents being demand promissory note, letter of continuing security, agreement of hypothecation of the goods. Defendant no.2 and original defendant no.3 also executed deed of guarantee dt.20.5.76 for the due repayment of the said facility advanced to the defendant no.1 by the plaintiffs under the cash credit facility no.1. Thereafter sometime in or about 24.12.79 the said cash credit facility was renewed and fresh set of documents were executed by the defendants.

Similarly, on 5.9.77, defendants requested further Cash Credit Facility being Cash Credit Facility No.III to the extent of Rs.40,000/-. In support of the said Cash Credit Facility also defendant no.1 executed similar documents such as demand promissory note, letter of continuing security and agreement of hypothecation of the goods. Defendant no.2 and original defendant no.3 also executed letter of guarantee dt.5.9.77 to secure the repayment of the said amount and alongwith interest thereon. This Cash Credit Facility No.III was also renewed on 24.12.79 and therefore, a fresh set of documents were executed by defendant no.1.

3. After giving Cash Credit Facility No.III on 24.12.79, defendants requested for a new Cash Credit Facility which was granted by the plaintiffs being Cash Credit Facility No.IV to the extent of Rs.1,50,000/- and once again defendant no.1 executed the demand promissory note, letter of continuing security and agreement of hypothecation. Again defendant no.2 and original defendant no.3 executed deed of guarantee in favour of the plaintiffs for due repayment of the aforesaid

amount. Cash Credit Facility was also renewed on 24.12.79 and therefore,a fresh set of documents were executed by defendant no.1 in respect of Cash Credit Facility No.IV in favour of the plaintiffs. Defendant no.1 also requested on 22.9.77 for a Supply Bill Purchase Facility to the extent of Rs.5.0 lacs and the plaintiffs granted the same on execution of similar set of documents. Defendant no.1 requested that the said supply bill purchase facility be renewed and accordingly on 22.9.79 the same was renewed by the plaintiffs. Even in respect of this facility defendant no.2 and original defendant no.3 has given a guarantee for due repayment of the aforesaid amount. It is the case of the plaintiffs that under each of the aforesaid account there was a due and payable of diverse amount by the defendants to the plaintiffs. It is the case of the plaintiffs that after giving credit to the various payments made under Cash Credit Facility, there has been due and payable by the defendants to the plaintiffs and amount as under:

(i). The Cash Credit Facility No.I, plaintiffs

are entitled to Rs.3,93,609.71 alongwith interest @ 18% on the principal amount outstanding of Rs.2,07,728.41.

(ii). Cash Credit Facility No.III, plaintiffs are entitled to sum of Rs.1,14,096.18 alongwith interest @ 18% p.a. on the principal amount of Rs.60,233.78.

(iii). Cash Credit Facility No.IV, plaintiffs are entitled to amount of Rs.2,19,258.33 alongwith interest @ 18% p.a. on the principal amount of Rs.1,15,763.13.

(iv). Bill Purchase Facility claim made by the plaintiffs is for a sum of Rs.1,71,134.10 which includes interest of Rs.92,448.10.

4. Thus, the plaintiffs have filed the suit in respect of all the aforesaid cash credit facility jointly. Cash Credit Facility of sum of Rs.7,26,964.22 and in respect of Bill Purchase Facility for a sum of Rs.1,71,134.10. The defendant no.1 has filed written statement through

Official Liquidator. Official Liquidator in his written statement has only put the plaintiff to the strict proof of claim and has put forward no defence on merits in respect of the said claim. Written Statement of the Official Liquidator is that of mere denial. Defendant no.3(a) and 3(b) has also filed written statement. It has been contended by defendant no.3a and 3b that they are not the legal heirs and representative of original defendant no.3 who was described in the suit as Anant Narayan Bellare. It is their contention that they are the legal heirs and representatives of Amrut Narayan Bellare. It has been therefore contended that they are not liable to the suit claim. The learned counsel for the defendant 3(a) and 3(b) has also put the plaintiff to the strict proof of the claims raised in the present suit. Defendant no.2 has not filed any written statement in the present suit. On the aforesaid pleadings, issues were framed on 15.6.05 as under:

1. Whether the defendants are liable to pay to the plaintiffs the sum of Rs.7,26,964.22 alongwith interest thereon @ 18% p.a. on the principal sum of Rs.3,15,000/- from the date

of the suit till payment and/or realisation in respect of cash credit facilities?

2. Whether the defendants are liable to pay to the plaintiffs the sum of Rs.1,81,134.10 alongwith the interest thereon @ 18% p.a. on the principal sum of Rs.78,686/- from the date of the suit till payment and/or realisation in respect of Bill Purchase Facility?

3. Whether the outstanding amounts payable by the defendants to the plaintiffs are validly secured by the hypothecation of the stock, raw material of semi finished and finished goods belonging to defendant no.1?

4. Whether the defendant no.1 proves that the plaint is barred by the law of limitation as alleged in paragraph 6 of the written statement?

5. Whether the defendant no.1 proves that the plaintiff's claim will rank as an ordinary claim in winding up?

6. Whether the original defendant no.3 was liable as guarantor for the suit claim as alleged by the plaintiffs in the plaint?

5. The plaintiffs have laid before me the evidence of two witnesses. Firstly, the evidence is laid of one Romesh Gupta who has deposed on the basis of record that the various facilities under various heads were given to the defendant no.1 and that defendant no.1 is liable in respect of such claim. He has also deposed that defendant no.2 and 3 be given guarantee in respect of suit claim and

therefore suit claim is liable to be granted. However, in the cross-examination which was conducted by the learned counsel for the defendant no.3(a) and 3(b), witness has denied any knowledge of the suit claim in particularly he has deposed as under:

> "I did not handle the papers when the suit transaction took place in 1976. I was also not aware who were the parties to the said transaction. I am deposing in the present case on the basis of the record which is available with my branch because the suit pertains to my branch which is Gowalia Tank Branch. I have not seen defendant nos.2 and 3 signing any of the documents which are produced by me in the evidence. I identified the signatures because the names of the signatories are mentioned and there are large number of documents on which the names and signatures are appearing.
>
> It is true that I have identified the signatures merely because the names of the parties are written in the documents below their signatures.
>
> The defendant no.3 in the plaint is one 'Anant Narayan Bellare'. I cannot say whether the defendant nos.3(a) and 3(b) are the daughters of the deceased defendant no.3."

6. In the light of cross-examination of the witness of the plaintiffs in which he has denied

any knowledge in respect of the suit transaction as well as he has denied that he is aware that defendant no.3(a) and 3(b) are the daughters of the original defendant no.3 has to be totally discarded. In my opinion, the evidence of P.W.No.1 is worthless. He is not aware of any of the facts. He is not aware of even the signature on the documents.

7. However, the plaintiffs have laid the evidence of P.W.No.2, Mr.Rasik G.Jaykar. The said witness at the relevant time was the Officer of the plaintiff bank. He has not only identified his own signature but has also identified the signature of defendant no.2 and original defendant no. 3. He has also identified various documents which are executed between the parties. He has stated that he was associated in dealing with the suit transaction between the plaintiffs and the defendant bank. He has also identified the signature and admission of documents containing acknowledgment of liability of defendants in respect of the said facilities and has confirmed that the under the four different facilities

various amounts at the foot of the said account are due and payable and in respect thereof liability are acknowledged by the defendant at the relevant time. He has also deposed in his evidence that he is aware that the Director of defendant was one Mr.Amrut N.Bellare and the signature A.N.Bellare appearing on the document is that of Amrut N.Bellare and not of any Anant N.Bellare. However, he has stated that he does not know how in the title of the suit the said Amrut N.Bellare is described as Anant N.Bellare whereas actually the name was Amrut Narayan Bellare. The learned counsel for defendant no.3 (a) and (b) wanted to lead evidence only to the extent that no part of the estate of the father namely Amrut N. Bellare has come to the hands of defendant no.3(a) and (b) and even if decree is passed against them the same cannot be executed against them.

8. In so far as this issue is concerned that their liability is only to the extent of estate of the deceased it only arises if I hold that they are the legal heirs of one Amrut N.Bellare and original defendant no.3 was not Anant N.Bellare but Amrut

N.Bellare. In so far as the question whether the father of the defendant no.3(a) and (b) is concerned there is no dispute that his name was Amrut Narayan Bellare and not Anant Narayan Bellare. Thus, in my opinion no evidence is required to be led for establishing the aforesaid fact.

9. After perusal of the documents which are produced by the plaintiffs on record which are marked at Ex.P-1 collectively and Ex.P-2 and Ex.P-3, I am of the opinion that the plaintiffs have been able to establish that there has been a transaction of loan lent and advanced by the plaintiffs to original defendant no.1. Plaintiffs have also been able to establish from the documents that there are deed of guarantee which are executed by defendant no.2 and one Amrut N.Bellare. The signature of the said witness has been duly indicated and identified by the witness. In view thereof, liability of the defendants to pay the amount outstanding under each of the aforesaid facilities cannot be disputed.

10. However, the learned counsel for defendant no.3 (a) and (b) has contended that the plaintiffs have failed to establish the contents of the documents which are produced in evidence and marked Ex.P-1 collectively. In his written statement, he has interalia contended that he did not admit the various transactions between the plaintiffs and defendant no.1 and 2 and the original defendant no.3 because they were not parties to such a transaction and are only the legal heirs of Amrut Narayan Bellare. I do not find substance in the aforesaid contentions. The documents and acknowledgement of liability are produced before me. Documents are identified. Witness appearing on behalf of the plaintiffs has also deposed that he was concerned with the transaction at the relevant time. He has also deposed that there was amount due and payable and in respect thereof the acknowledgments of liabilities by the defendants are on record. In that view of the matter, it is not possible to accept the contention of the learned counsel for the defendant no.3 (a) and (b) that because P.W.No.2 did not state in his course of evidence that the contents of the said documents

produced by me are admitted and correct, I must dismiss the suit instituted by the plaintiffs for the recovery of the said amount. In view thereof, I reject the aforesaid contention of defendant no.3 (a) and (b) and I also hold that the plaintiffs have been able to establish the claim for the recovery of the aforesaid amount on the basis of documents which are produced by them in the course of evidence.

11. This leads me to the next contention advanced by the learned counsel for defendant no.3(a) and (b) pertaining to the name of original defendant no.3. It is his contention that the defendant no.3(a) and 3(b) are not the legal heirs of the original defendant no.3 who is described as Anant Narayan Bellare but they are the legal heirs of one Amrut Narayan Bellare. According to him, there is no person called Anant Narayan Bellare and thus, the suit against defendant no.3(a) and (b) must consequently fail. I do not agree with this contention for many reasons. Firstly, at the time of amendment to bring the legal heirs of defendant no.3 on record this issue was raised by the

advocate appearing for defendant no.3(a) and (b) and had contended that they are not the legal heirs of said Anant N.Bellare. However, the court permitted the amendment and rejected the contention by substituting the present defendants as heirs of deceased original defendant no.3. Obviously, there is no person called Anant Narayan Bellare and therefore, they have been brought on record as legal heirs of Amrut Narayan Bellare. This order was obviously passed because original defendant no.3 in the suit was merely wrongly described as Anant Narayan Bellare in place of Amrut Narayan Bellare. However, the learned counsel for defendant no.3 (a) and (b) has contended that there is no amendment carried out to the title of the suit by rectifying wrong description of defendant no.3 and in that view of the matter it cannot be said that defendant no.3 was only wrongly described. I am unable to accept this contention because when the amendment was sought to be carried out to bring legal heirs on record, the defendant no.3(a) and (b) disclosed that Anant N.Bellare is not the correct name of their father but it is Amrut N.Bellare. By the time, the said gentleman

already expired. In view of the death of the said original defendant no.3, the question of altering the name of original defendant no.3 from Anant N.Bellare to Amrut N.Bellare cannot at all arise. Obviously because defendant no.3 being dead his name is already been deleted from the arena of the parties to the present suit and Defendant no.3 (a) and (b) are impleaded as legal heirs of Amrut N.Bellare. In view thereof, it is not possible for me to accept the aforesaid contention advanced by the learned counsel for defendant no.3 (a) and (b).

12. I am also of the opinion that the said contention is devoid of any merits because of the following reasons: Firstly, it is an admitted position that Amrut N.Bellare was the director of defendant no. 1 company. Secondly, it is also an admitted position that there is no man or no person called Anant N.Bellare. Thirdly, because Amrut N.Bellare has signed the documents as A.N.Bellare. and P.W.No.2 has deposed in his evidence that the signature of A.N.Bellare is not of Anant N.Bellare but Amrut N.Bellare. It is also not in dispute that there was an another person as director of

defendant no.1 company known as Anant Narayan Bellare. It is also not in dispute that defendant no.3(a) and (b) are the legal heirs of Amrut N.Bellare and the learned counsel is fairly conceded that Amrut N.Bellare was infact director of the defendant no.1 company.

13. From the totality of the aforesaid circumstances, it is evident that the description of defendant no.3 as existed originally being Anant N.Bellare was nothing but a misdescription and therefore suit cannot be dismissed on such a ground. The learned counsel for the plaintiffs has also relied upon the judgment of the Apex Court in the case of Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon reported in the case of 1969 1 SCC 869 and has contended that the suit cannot be dismissed merely on the ground of wrong description. In the light of the view expressed by the Apex Court, I am not inclined to accept the contention of the learned counsel for defendant no.3 (a) and (b) that suit must fail because original defendant no.3 was joined as and by way of wrong description as Anant when persons

name was Amrut.

14. The last issue which requires to be determined is issue of limitation. It is now an admitted position on record that letter of acknowledgment of liability has been signed in respect of each of the 4 facilities on 5.9.81. Suit is filed some time in or about August 1984 within the period of 3 years from the date of signing of acknowledgment of liability and therefore, the suit claimed is within time.

15. In the aforesaid circumstances, suit is required to be decreed in terms of prayer clause (a) and (c). In so far as prayers clause (b) and (d) are concerned, the learned counsel for the plaintiffs has fairly conceded that no such raw material is available. Whatever stock was available has been sold by the Official Liquidator and in respect of which sum of Rs.30,000/- has been recovered. Official Liquidator is directed to hand over the said amount of Rs.30,000 in accordance with earlier orders passed by this court which has not been complied with by the Official Liquidator.

Thus, plaintiffs are entitled to execute decree for the balance amount after giving credit for Rs.30,000/-. In so far as defendant no.3(a) and (b) are concerned, it is clarified that they will be liable to pay the decreetal amount only to the extent of the estate falling in their hands of the original defendant no.3 Amrut N.Bellare and it will be open for them to contest the execution of the decree on the basis that the decree is not to be executed on the property which is not forming part of the estate of the deceased Amrut N.Bellare and/or that no share of estate has come to their hands. In the aforesaid circumstances, suit is decreed accordingly. Suit is disposed of. No order as to costs.